

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

BEFORE THE HONORABLE JUDGE CARLA E. CRAIG
UNITED STATES BANKRUPTCY JUDGE

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1 THE COURT CLERK: Second call. Matter number thirteen on the
2 calendar, Case Number 14-43649, Yosi Shemtov.

3 THE COURT: All right. Okay. Be seated please. All right.
4 Mr. Weiner, where are we with this case which is now how old? It's
5 -- it's -- is it -- it's a July case, so it's a -- it's -- it's
6 getting pretty old at this point. Seven, eight months old?

7 MR. WEINER: Yes. The -- the Debtor sent off modification
8 packages to all the first mortgages on the five properties he wants
9 to keep. He got a response for -- asking for some additional
10 documents, and that's been sent -- sent off as -- as well. And
11 we're supposed to hear something back in the next couple of weeks.

12 THE COURT: Uh-huh.

13 MR. SAMUELS: Good afternoon, your Honor. Michael Samuels,
14 Shapiro, DiCaro and Barak on behalf of Wells Fargo. Just to address
15 a few things --.

16 THE COURT: Which -- which -- which property is your client
17 on?

18 MR. SAMUELS: It's with respect to a few properties. 8680
19 Midland Parkway and 8682 Midland Parkway.

20 THE COURT: Is this -- are -- are these properties which the
21 Debtor is proposing to keep?

22 MR. WEINER: Yes --.

23 THE COURT: But he's not keep -- for the ones he's not
24 keeping, what is he -- what is he doing?

25

1 MR. WEINER: He's trying to negotiate a surrender of those
2 properties.

3 THE COURT: Uh-huh.

4 MR. SAMUELS: Judge, I want to address those two properties
5 that are relating to my client. I notice Counsel has previously
6 advised the Court it was an ongoing loan modification process and
7 they were seeking a loan modification. But the actual background of
8 this case is there may have been an attempt at one point for a loan
9 modification on one of the properties.

10 The Debtor did not submit the appropriate documentation and
11 was denied a loan modification. They haven't done anything since,
12 your Honor.

13 THE COURT: Okay. I mean, this -- this is -- this is July --
14 this is March. The case was started in July. You -- you told me on
15 day one that his goal was to get a loan modification. It doesn't --
16 shouldn't take eight months to complete this process, and I'm
17 hearing that he is not really following up on this.

18 MR. WEINER: Judge, I'm -- I'm told that that's not true,
19 that all the documents that they requested have been -- have been
20 sent out, although albeit recently. And -- and I have not received
21 any correspondence, and I do get copied on these things --

22 THE COURT: So is your client --?

23 MR. WEINER: -- of -- of a denial of a loan -- of a loan
24 modification. I --.

25

1 THE COURT: This -- this denial took place a while ago you're
2 saying?

3 MR. SAMUELS: About -- what my client told me, this took
4 place many, many months ago.

5 MR. WEINER: But I don't -- I don't understand what that
6 means because I got -- I have a letter from -- from some of the
7 banks in -- in just as recently as December saying that they
8 received the package for modification. So I -- I --.

9 THE COURT: But we're talking about his client right now.

10 MR. WEINER: Right.

11 MR. SAMUELS: Your Honor, at prior conferences, before this
12 Court, I asked the Debtor's Counsel please provide me with any
13 documentation your client submitted in connection with loan
14 modification, that way we can work with you and try to expedite the
15 process, get something done. At every occasion, the Debtor's
16 Counsel has been nonresponsive. Has not provided me any response
17 with respect to the supposed loan modification packages.

18 Hasn't told me who he's been dealing with, what was --
19 documents have been provided, and my client has no record of this.

20 THE COURT: Are you leaving it to your client to handle this?

21 MR. WEINER: No, he has -- he has somebody that's work --
22 he's been working with. I -- I --.

23 THE COURT: Not you -- not you in other words?

24 MR. WEINER: Not -- not me. But I have copies of the packet
25 -- the packages on the five loans that -- that just went out.

1 THE COURT: So why haven't -- why -- why --

2 MR. WEINER: I will -- I will -- I will send it to him. I
3 just --.

4 THE COURT: -- but why -- why -- why are we talking about
5 this now and you didn't get it --?

6 MR. WEINER: I just got -- I just got this package yesterday,
7 your Honor, which is a response to the initial request for more
8 documentation. And then I received the -- a copy of what's going
9 out -- what went out this week. I just got that yesterday. I'd be
10 happy to send it to Counsel.

11 THE COURT: So the packages have just gone out?

12 MR. WEINER: Well, the initial package went out back in
13 December. They got a request for additional documents a few weeks
14 ago, and those are going out -- those went out yesterday.

15 THE COURT: The case was filed in July --

16 MR. WEINER: Yeah.

17 THE COURT: -- and the initial packages went out in December?

18 MR. WEINER: Or maybe sooner than that. I got -- have
19 letters from the bank that they received -- they received them in --
20 in December. So I don't know if they --.

21 THE COURT: What do I -- do I need to -- maybe I should give
22 you a date to file a plan and disclosure statement, because I don't
23 think -- I don't think your client is taking this seriously. For
24 whatever reason, the lenders haven't moved for stay of relief. I
25 don't know why. He isn't paying the mortgages on any of these

1 properties. He's sitting here with what, eight properties? He's
2 been in bankruptcy for eight months. This is -- this is --.

3 MR. WEINER: It's not unreasonable to set a date, Judge.

4 THE COURT: Sorry?

5 MR. WEINER: It's -- I'm not going to say it's unreasonable
6 to set a date.

7 THE COURT: Okay. Okay.

8 MR. SAMUELS: Your Honor, if I may just raise two points.
9 One of the other points, besides the loan modification is that
10 Debtor apparently is receiving rental income on these properties.

11 THE COURT: Yeah.

12 MR. SAMUELS: There's no cash collateral order in place.

13 THE COURT: Oh, no. No, there's no cash collateral order.

14 MR. SAMUELS: No consent has been sent (unintelligible) --

15 THE COURT: No -- no rent being -- no -- no mortgage being
16 paid.

17 MR. WEINER: All the -- all the money is in the D.I.P.
18 account, Judge.

19 MR. SAMUELS: Your Honor, I have requested an accounting
20 previously in terms of what monies are in there and I -- I still
21 don't know.

22 THE COURT: Are you saying he's not --

23 MR. WEINER: We -- Judge, we file -- we file --.

24 THE COURT: -- you're saying he's not using the cash
25 collateral?

1 MR. WEINER: We filed -- we file reports every month showing
2 where -- where the money is.

3 THE COURT: But he's got to be -- he's using a cash
4 collateral for his personal --.

5 MR. WEINER: I mean, just -- just -- no, he's not. Well,
6 part of the money --.

7 THE COURT: Does he have any source of income other than the
8 rents from these buildings?

9 MR. WEINER: Yes, he has a job.

10 THE COURT: Okay.

11 MR. WEINER: He makes four thousand dollars a month take home
12 from --.

13 THE COURT: So he's not using any of the rents for use --.

14 MR. WEINER: Not for his -- not for his personal expenses.
15 That -- they're all --.

16 THE COURT: So all of the rents are segregated and being
17 held.

18 MR. WEINER: They're all in the D.I.P. account. Now -- now
19 there may be some small utility bills that are being paid, but other
20 than that they're all -- they're -- all the money is in the -- is in
21 the Debtor in Possession Account. I'm told that there's
22 approximately seventy-five thousand dollars in the account now, and
23 there's twenty-five thousand dollars in rent currently owed to him
24 that he expects to collect. So there -- there should be more than
25 that shortly, so.

1 THE COURT: Well, I guess your ultimate remedy -- these --
2 and these properties are mostly under water as I recall from looking
3 at this. I don't know why you're not moving for stay relief, but
4 that's your choice, so --.

5 MR. SAMUELS: Your Honor, I'm sorry.

6 THE COURT: Go ahead.

7 MR. SAMUELS: We were trying to work out something with this
8 Debtor because the Debtor -- we wanted to see what direction this
9 case was going in. Obviously it's going in no direction, so my
10 client will be bringing the appropriate relief if necessary.

11 THE COURT: All right. I'm going to put this on for the 22nd
12 of April. I'm going to direct that the Debtor file a plan and
13 disclosure statement by March 27th and that they bring on a hearing
14 for approval of the disclosure statement for April 22nd.

15 MR. WEINER: That's pretty short time. And like I said,
16 we're -- we're expect -- you know, we're expecting --

17 THE COURT: It's two -- it's a little over two weeks.

18 MR. WEINER: -- between -- I understand. But March 27th is
19 right around when we should be getting a response from the banks to
20 the -- to the documents we just sent out. And it's going to be hard
21 to do a plan and disclosure statement not knowing what the initial
22 reaction from -- from these banks are. It's just --.

23 THE COURT: It's mind boggling to me, Mr. Weiner, that it's
24 March. You filed in July and you're waiting -- you're expecting in
25 April to hear from -- on packages sent out in December. What was --

1 MR. WEINER: Well, the --.

2 THE COURT: -- what was going on between July and December?

3 MR. WEINER: What -- that I can't say, but from -- after
4 December --.

5 THE COURT: How is it that you can't say?

6 MR. WEINER: Well, it took a while to put all that -- put the
7 information together and figure out where the Debtor wanted to go
8 with the --.

9 THE COURT: The information has to do with the rents and the
10 expenses of the property. He presumably should know that.

11 MR. WEINER: Yes, but the -- the documents that went out to
12 the bank, it's -- it's not just a letter. It's a big thick package
13 with a lot of documentation that went out. And then there was a
14 request for more information, and that just went out this week. And
15 it is going to take at -- at least two weeks or so, maybe a little
16 longer for us to get a response to that. It was really hard to -- I
17 mean, I could make something up, but I don't want to do that.

18 THE COURT: Well --.

19 MR. WEINER: Plus I -- you know, I need projections from an
20 accountant. It's in the middle of tax season. That's not -- also
21 not an easy thing to do.

22 THE COURT: I suppose it's my fault for letting it go this
23 long, but I don't -- I -- it is -- it's beyond my comprehension why
24 this should be in this state that it is at this point in time.

25 MR. WEINER: I understand.

1 THE COURT: So I will give you a hearing date on May 13. I'm
2 going to direct that you file a plan and disclosure statement by
3 April 10 and bring a motion for approval of a disclosure statement
4 by the 13th of May. And this is -- I think that I will enter a
5 conditional order to the effect that if you haven't brought on a
6 hearing for approval of a disclosure statement by that date, this
7 case may be dismissed because what I have often found is that I
8 enter an order directing that the -- somebody bring such a motion
9 and they don't.

10 MR. WEINER: Do -- do you want a motion or could I just send
11 out a notice of hearing?

12 THE COURT: I -- in other words, that's going to be the
13 hearing date for approval of disclosure statement.

14 MR. WEINER: Right.

15 THE COURT: But if you haven't teed it up for that -- a
16 hearing on that date, I'm going to assume that you're not prepared
17 to move this case forward.

18 MR. WEINER: But I -- I could just -- I've done it in other
19 cases just simply -- rather than making a motion for approval, just
20 send out a notice that there will be a hearing on that date.

21 THE COURT: That's fine. That's fine.

22 MR. WEINER: What was the date for that?

23 THE COURT: 13th of May. And I want to see your -- your plan
24 and disclosure statement on file on the 10th of April.

25 MR. WEINER: What -- what time on -- on May 13th?

1 THE COURT: Three o'clock.

2 MR. WEINER: Okay.

3 MR. SAMUELS: Your Honor, in the event that the plan is not
4 filed by April 10th, will there be any recourse?

5 THE COURT: I don't know. What do you think you'll do if he
6 doesn't file the plan and disclosure? My order is going to say that
7 the case may be dismissed. And so that means, I guess that somebody
8 has to pursue that or somebody would have to set up another hearing,
9 you know, after the -- in advance of the 13th.

10 I mean, let's just think through. Do you want to --
11 shall we think through the -- what the options would be at this
12 point or?

13 MR. SAMUELS: I could -- it's my --.

14 THE COURT: I'm not going to say -- I'm not going -- I don't
15 think I'm going to say that the case is automatically dismissed at
16 that point.

17 MR. SAMUELS: All right. Well, your Honor, we have the --.

18 THE COURT: But what I'm saying -- but -- but what I'm saying
19 here is I'm expecting that we're going to have a hearing on approval
20 of a disclosure statement. If a -- and if the disclosure statement
21 is -- is -- can't be approved, if the plan -- there's no viable
22 plan, as far as I'm concerned, this case is over at this point.

23 MR. WEINER: I understand, Judge.

24 THE COURT: Okay. All right. Anything else?

25 MR. WEINER: I don't have anything else.

1 MR. SAMUELS: Thank you.

2 THE COURT: Okay.

3 MR. SAMUELS: All right. Thank you.

4 (The proceeding concluded)

5

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7

CERTIFICATE

8

9 I certify that the foregoing is a correct transcript
10 from the electronic sound recording of the proceedings in the
11 above-entitled matter.

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14 Judith Spriggs
15 Transcriptionist

25 March, 2015
Date

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